

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF AGRICULTURAL RESOURCES

In re:

**Massachusetts Dairy Farmers,

Petitioners.**

**PETITION FOR RELIEF
PURSUANT TO G.L. c. 94A, § 12**

Petitioners, certain Massachusetts Dairy Farmers, respectfully allege:

INTRODUCTION

1. An economic emergency exists in the Massachusetts dairy production sector. Low prices and skyrocketing input costs threaten the supply of fresh, pure milk in the Commonwealth, because many of our 189 licensed dairy farms may leave the business in 2007 and 2008. Massachusetts dairy farmers are receiving a lesser portion of the retail milk dollar than at any time in history. Petitioners are not making a living wage, indeed they are paid zero dollars for their labor, and lose \$35 per one hundred gallons of milk at recent price levels.

2. The dairy farmers signing this petition ask the Department of Agricultural Resources to declare an economic emergency and take effective remedial action as allowed by G.L. c. 94A, §12.

PARTIES

3. Petitioners are individuals and business entities that produce milk in Massachusetts. They feed and care for dairy cattle for this purpose. More than twenty five percent (25%) of Massachusetts licensed dairy farmers have signed this petition. The Massachusetts Association of Dairy Farmers, Inc. files this petition for the benefit of Petitioners.

4. Respondent, Commissioner of the Massachusetts Department of Agricultural Resources (MDAR), presides over the oldest state agriculture department in America. MDAR's reason for existence is to support, promote and enhance the long-term viability of Massachusetts agriculture so the industry may become as economically and environmentally sound as possible.

FACTS

5. Massachusetts dairy farmers work every day. They do not get weekends off. The biological mechanism that produces milk in bovine females does not halt on weekends. Dairy cows must be milked two or three times each day.

6. The vast majority of our Commonwealth's dairy farms are owned and operated by families who are not achieving a living wage. Publicly traded corporations, with duties owed to distant shareholders, tend not to engage in dairy farming. Massachusetts dairy farmers are accountable to themselves, their families, and their community.

7. The supply of milk is very inelastic. Farmers cannot store milk and negotiate for a good price. They must take the price the market offers that day. Farmers are price takers, with almost no negotiating strength. Milk does not store well. It is generally not canned and placed on an un-refrigerated shelf like commercial soups. Milk cannot be transported from, for example, California, without great cost. Most milk produced by Massachusetts dairy cows is therefore delivered to in-state processors. A substantial portion of milk consumed by families in Boston, Worcester, Pittsfield and the remainder of our Commonwealth comes from Massachusetts farmers.

8. The demand for milk is very inelastic. Milk is a food staple. "Demand inelasticity" means many consumers will buy the milk no matter how much the price rises. The average American drinks 23 gallons of milk per year.¹ Milk may be the most healthful drink for children and adults. It is the most natural and basic of beverages, and supportive of healthy growth and health maintenance.

9. Dairy producers in the New England and New York region do not produce enough fresh milk and milk products to meet demand in these states. Transportation of fresh milk from other major dairy producing regions is expensive and quality may suffer with distance.

10. The economic benefit provided by Massachusetts dairy farmers is substantial, though the dairy economy does not receive the media attention of, for example, the high tech industry. Each cow produces approximately 2,200 gallons of milk per year. The average Massachusetts dairy farm produces enough milk for 5,000 consumers. The cumulative value of

¹ The average American also consumes 30 pounds of cheese, and 23 pounds of ice cream each year. USDA, Economic Research Service.

all the milk produced by all the cows on all the Commonwealth's farms every year is tens of millions of dollars. This money is spent in Massachusetts towns and cities.

11. Dairy production is a linchpin in a very broad and deep economic chain. Dairy producer gross revenue multiplies and reverberates several times through the economy. Many Massachusetts businesses are impacted by dairy revenue, including animal feed dealers, lumber and building materials, equipment dealers, energy suppliers, veterinarians, transportation companies, and banks.

12. Dairy processing companies, and their employees, in Massachusetts depend upon our farmers' existence. Examples include: Friendly's, Columbo, Good Humor, Hood, Garelick, West Lynn, Breyers, Agri-Mark/Cabot, Our Family Farms of Western Massachusetts, High Lawn Farm, Snows, Bliss Brothers, Flavors of Cook Farm, Cooper Hill Dairy, Granville Scoop, Whittier Farms, Shaw Farm, and many others. These companies process Massachusetts fresh fluid milk, ice cream, standard cheeses, artisan cheeses, yogurt, powdered milk, condensed milk and butter.

13. Environmental stewardship is a major concern of the Commonwealth. Petitioners provide this public good to our citizens. Massachusetts farmers, including but not limited to dairy producers, control more land than the Commonwealth's Department of Conservation and Recreation. Farmers maintain soil fertility, water purity, and pasture viability year after year to produce crops and graze cattle. Petitioners do not grow four lane highways, concrete parking lots, high-rise apartment buildings, or shopping centers.

14. Open space preservation is another important state public interest. Massachusetts dairy farmers could choose to sell their land for a substantial profit for development, but they do not unless they are economically forced out of business. Their land is also used and enjoyed by sportsmen, recreationalists, naturalists, and tourists. The value of land for dairy farming is far less than its value as a retail or residential development. An open and attractive rural landscape is maintained, benefiting neighboring families, the Commonwealth's citizens, and out-of-state travelers.

15. The landscape of New England is world-recognized and renowned. Dairy farmers provide working landscapes across the region. The cultural identity provided by dairy production is over 300 years old. This combination of working landscapes and culture are a major interest of the Commonwealth and drive tourism.

16. Massachusetts dairy farmers are good and solid business people. They are innovative, and adapt to a changing economic environment. The dairy industry is an important economic engine for the Commonwealth. Massachusetts dairy farmers are as efficient as any producers in the United States given the available resources. But the low prices and skyrocketing costs are causing an economic emergency.

STATUTORY ALLEGATIONS

17. Low milk prices received by dairy farmers threaten the continued viability of Petitioners' dairy businesses. The risk of a crash in local milk supply availability is great, not merely incremental. These low prices have been below the cost of production for more than one year. New or renewed bank loans to finance the next production year are becoming very hard to obtain. Loans previously disbursed may not be paid back. Vendor invoices have not been paid for increasing lengths of time. The threat of bankruptcy grows strong, and the attraction of selling land to local developers increases.

18. Retail milk prices have risen during the past several years above the rate of general inflation, and despite lower prices for milk at the farm gate. But Massachusetts dairy producers have seen their share of the retail milk dollar shrink to record lows. As the retail milk price increases, consumer access to milk at a reasonable price is reduced.

19. The relevant market, for purposes of these proceedings, is the Commonwealth of Massachusetts. Some milk is imported from other states, and some milk is delivered to other states. But the majority of milk produced here is consumed here.

20. The price to producers established by the market, or under federal law and regulations, cannot be maintained without intervention by the Commissioner without dire consequences.

21. A regular, continuous and adequate supply of fresh, pure milk sufficient to meet the requirements of the Commonwealth is in jeopardy without Commissioner action.

22. The public health is threatened by these dire economic circumstances. The economic failure of Massachusetts farmers will lessen the supply of fresh, pure milk within a reasonable transportation distance, increase prices due to stable or increasing consumer demand, and restrict the ability of low income consumers to purchase milk for themselves and their children. The public health is also threatened in terms of the environment and open space.

23. Protection of the environment, open space and working landscapes by dairy farmers, and preservation of the rural and agrarian character of the Commonwealth, are important local interests that cannot be effectively advanced without providing a reasonable return on the labor, management and capital to dairy producers. There is no other reasonable option to protect these local interests over the long term.

24. Any order issued by the Commissioner to address these problems will not burden out-of-state economic interests or alter the market share among producers or states.

Massachusetts producers do not compete with producers in other states because they are merely price takers, delivering their product into a regulatorily controlled pricing market. Out-of-state producers neither benefit by Massachusetts dairy producers exiting the business, nor are they harmed by Massachusetts dairy farmers staying in business.

25. Any order issued by the Commissioner will not prohibit interstate competition on price or non-price factors. Market diversity will be fostered. No legitimate competitive advantage held by any firm or entity will be affected by Commissioner action.

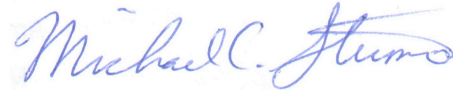
REQUEST FOR RELIEF

26. Petitioners therefore respectfully request the following relief from the Commissioner pursuant to G.L. c. 94A, § 12:

- a. A public hearing be convened to receive facts and make conclusions;
- b. A declarations of the existence of an emergency in the Massachusetts dairy sector;
- c. A determination of minimum prices for dairy producers at a level sufficient to remedy the harm and/or compensate for the public benefits provided by producers;
- d. A system of payments be established to compensate producers for environmental stewardship, open space preservation, or increased production costs;
- e. Increased fees for milk handlers at the retail or wholesale levels;
- f. Any other relief authorized and appropriate.

Dated this 29th day of January, 2007.

Counsel for Massachusetts Association
of Dairy Farmers, Inc.



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- Admission sought pro hac vice to the extent necessary and appropriate for this forum.